

Los Angeles District North Coast Interagency Review Team (NC-IRT)
Meeting Summary, December 17, 2013

Call-in and Web Meeting Info

Conference Teleconference Line: (877) 873-8018

HOST PASSWORD: 2483

ACCESS CODE: 8373883 (is also security code if host has not connected)

Web Meeting Address: <https://www.webmeeting.att.com>

Meeting Number(s): (877) 873-8018

HOST PASSWORD: 2483

ACCESS CODE: 8373883

Participants (Affiliation):

John Markham (USACE, Regulatory)

Shannon Pankratz (USACE, Regulatory)

Brianne McGuffie (USACE, Regulatory)

Paul Amato (USEPA, Region 9)

Christine Medak (USFWS, Carlsbad Office)

Justin Seastrand (US Forest Service) (USFS)

Joanna Gibson (California Department of Fish and Wildlife, Region 6)

Dave Lawhead (California Department of Fish and Wildlife, Region 5)

Kate Huckelbridge (California Coastal Commission (CCC))

Mark Adelson (Santa Ana Regional Water Quality Control Board)

Jan Zimmerman (Lahontan Regional Water Quality Control Board)

Peter Brand (California State Coastal Conservancy)

Megan Cooper (California State Coastal Conservancy)

Moir McEnespy (California State Coastal Conservancy)

Julie Vandermost (VCS Consulting)

Shawn Gatchel -Hernandez (VCS Consulting)

Tim DeGraff (WRA Consulting)

Nate Bello (WRA Consulting)

Tracey Brownfield (Land Veritas)

FINAL AGENDA

Announcements:

Time: 1 - 1:15 PM

- a. Acts of God/Force Majeure: A sponsor is not responsible for restoring a ILF/MB site in circumstances that qualify for force majeure (see template language below). However, per Corps office of counsel, we should all bear in mind the following:

- 1) The burden rests with the sponsor to demonstrate the applicability of force majeure;
- 2) As credits are released depending upon site performance (e.g., meeting y1, y3, y5 performance criteria, consistent with "credit release schedule"), should the catastrophic event occur during the monitoring phase (e.g., years 1-5), then no more credits would be released until the site is able to meet the next set of performance criteria;
- 3) The Interim Management Plan and/or Long Term Management Plan may have case-specific adaptive management provisions that account for some degree of natural or human-induced site disturbances and describe requirements for remedy/maintenance in such contingencies...beyond which force majeure may apply.

DEFINITIONS:

"Force Majeure" shall mean war, insurrection, riot or other civil disorder, flood, drought, lightning, earthquake, fire, landslide, disease, effects of climate change on habitat or hydrology, condemnation or other taking by governmental body. Other conditions beyond the Program Sponsor's control will include: interference by third parties; condemnation or other taking by any governmental body; change in applicable law, regulation, rule, ordinance, or permit condition, or the interpretation or enforcement thereof; any order, judgment, action or determination of any federal, state or local court, administrative agency or governmental body; and/or suspension or interruption of any permit, license, consent, authorization or approval.

SECTION VIII: OTHER PROVISIONS

A. Force Majeure

1. The Program Sponsor shall be responsible to maintain the ILF Project site and perform Remedial Action except for damage or non-compliance caused by Catastrophic Events, events of Force Majeure or Unlawful Acts. In order for such exception to apply, the Program Sponsor shall bear the burden of demonstrating all of the following:

- a. That the damage or non-compliance was caused by circumstances beyond the control of the Program Sponsor and any person or entity under the direction or control of the Program Sponsor, including its employees, agents, contractors and consultants;
- b. That neither the Program Sponsor, nor any person or entity under the direction or control of the Program Sponsor, including its employees, agents, contractors and consultants, could have reasonably foreseen and prevented such damage or noncompliance; and,
- c. The period of damage or non-compliance was a direct result of such circumstances.

MB and ILF Proposals:

1) TIME: 1:15 PM

Mitigation Bank or In Lieu Fee Program: Consultant introduction to draft BEI changes, including service area approach, delineation modification, and buffer credits, Soquel Canyon Mitigation Bank

Proposed Service Area: TBA

Corps Manager: Shannon Pankratz

Sponsor/Consultants: Tracy Brownfield (sponsor), WRA & VCS (consultants)

Document Source: Materials provided to Corps and IRT on December 16, 2013

2) Time: 2:00 PM

Mitigation Bank or In Lieu Fee Program: Draft restoration plans, proposed service area (based on the Soquel MB methodology), and road alignment/easement (US Forest Service/State of CA) issue, Elizabeth Lake/Petersen Ranch Mitigation Bank

Proposed Service Area: TBD

Corps Manager: Brianne McGuffie

Sponsor/Consultants: Tracy Brownfield (sponsor), WRA & VCS (consultants)

Document Source: Materials provided to Corps and IRT on December 16, 2013

3) TIME: 2:45 PM

Mitigation Bank or In Lieu Fee Program: Release of final Instrument for renewal of Calleguas Creek Watershed ILF Program

Approved Service Area: Calleguas Creek watershed

Corps Manager: John Markham

Sponsor/Consultants: Peter Brand

Document Source: A red-line and clean copy of this document were distributed to IRT members via email on December 3, 2013. Comment deadline is January 6, 2014.

4) Time: 3:15 PM

Mitigation Bank or In Lieu Fee Program: Sponsor's responses to public comments, State Coastal Conservancy/Southern California Wetlands Recovery Project (SCWRP) ILF Program Prospectus

Proposed Service Area: Southern California bight (Point Conception to San Diego)

Corps Manager: John Markham

Sponsor/Consultants: Megan Cooper

Document Source: The responses to comments were distributed separately to IRT members in email on December 12, 2013, whereas the Prospectus is available in RIBITS (Corps MB and ILF program tracking website), https://rsgisias.crrel.usace.army.mil/ribits/f?p=107:25:30732106240926::NO::P25_REPORT_ID,P3_LOCATION,P3_LOCATION_ID:5100,PROGRAM,2041

DISCUSSION (see **bold text** for “action items”)

- I. Soquel Canyon Mitigation Bank: introduction to draft BEI changes, including service area approach, delineation modification, and buffer credits
 - a. Sponsor/USACE:
 - i. Sponsor recently revisited/revised CDFW JD, resulting in a few more WoUS being identified since original delineation
 - ii. Sponsor did not include buffer zones for CDFW waters
 - iii. Sponsor introduced the Corps’ primary, secondary and tertiary service areas, as well as provided a description of the WoUS buffer areas. The riparian buffer acreage is relatively small compared to the overall acreage of upland buffer onsite.
 - iv. Requesting comments on revised BEI by January 21 2014, and target date for BEI signature April 1 2014.
 - b. General issues raised (by Agencies):
 - i. USACE:
 1. *Comment:* Requested color photos of the newly identified WoUS features onsite.
 2. *Response (sponsor):* **Sponsor will submit to Corps.**
 3. *Comment:* **Requested all IRT members to have the next dBEI version (to be provided by sponsor in December) to be reviewed by the next monthly IRT meeting, January 21st.**
 4. *Response:* Comment noted.
 - ii. USEPA:
 1. *Comment:* Asked what happens when different service areas of different mitigation banks may overlap a given project area.
 2. *Response (Corps):* No set policies or protocol for choosing either bank, up to the discretion of the project manager handling the project.
 3. *Comment:* Requested for all future iterations of JD maps and buffer widths, that the buffer width(s) outlined to be listed in figure legend
 4. *Response:* Comment noted.
 5. *Comment:* Why is Temescal Wash part of secondary service area when it is geographically closer than other parts of primary service area?
 6. *Response (Corps):* The primary service area is composed entirely of the 10-digit HUC encompassing mitigation bank site and adjoining 10-digit HUCs. Temescal Wash is adjacent, but not adjoining. CDFW:

7. *Comment:* There is potential for separate Corps, CDFW, and CEQA service areas, the latter accommodating City or County requirements. **CDFW will discuss the idea of using a state (CEQA) secondary service area, similar to the Corps' tertiary service area, with staff.**
 8. *Response:* Comment noted.
 - iii. RWQCB:
 1. *Comment:* Requested a workshop meeting with sponsor after receipt of the next dBEI version.
 2. *Response:* **Sponsor will set up the meeting, and would also be available to do the same for the other agencies.**
 - iv. IRT Determinations/Approvals: Corps and USEPA approved revised Service Area for water of the U.S. compensatory mitigation.
- II. Elizabeth Lake/Petersen Ranch Mitigation Bank: draft restoration plans, proposed service area (based on the Soquel MB methodology), and road alignment/easement (US Forest Service/State of CA) issue
- a. Sponsor:
 - i. Reviewed some of the Petersen Ranch Grading Plans including pond restoration, berm removal.
 - ii. Reviewed Elizabeth Lake drawings, including dam removal, and alluvial floodplain restoration.
 - b. General issues raised (by Agencies):
 - i. USACE:
 1. *Comment:* Regarding Petersen Ranch, why they are doing grading vs. allowing natural accumulation (in-fill) in the pond areas?
 2. *Response (sponsor):* The ponds are quite deep, so natural accumulation wouldn't allow for the desired habitat conversions in this timeframe (1-5 year).
 - ii. USEPA:
 1. *Comment:* Regarding Petersen Ranch site, is sponsor simply removing berm along Elizabeth Lake Road and leaving channel "as is")?
 2. *Response (sponsor):* Yes, natural succession will take place and right bank would be a floodplain.
 3. *Comment:* Regarding Elizabeth Lake site, dam removal cross section at Elizabeth Lake site doesn't reflect dam lowering
 4. *Response (sponsor):* **To be revised.**
 5. *Comment:* Regarding Elizabeth Lake site, is there enough upstream sediment supply to bury the dam?
 6. *Response (sponsor):* Yes, per Project Engineer.

7. *Comment:* Is sponsor seeking credits for work proposed for the dam face?
8. *Response (sponsor):* No, that was not the intent; only seeking credits for the alluvial fan below the dam.
9. *Comment:* Is the sponsor seeking credits for the entire alluvial fan?
10. *Response (sponsor):* Yes, specifically from CDFW.
11. *Comment:* EPA is concerned about allowing waters of the U.S. mitigation credits within portions of alluvial fan that go well beyond waters of the U.S. jurisdiction.
12. *Response (Corps):* **This will be discussed internally with Corps management.** The mitigation rule allows for flexibility in mitigation and can go into buffers and beyond waters of the US but we must be mindful of no net loss and strength of connection to jurisdictional areas.

iii. CDFW:

1. *Comment:* Regarding Petersen Ranch site, is this a balanced grading plan (i.e., same amount of cut & fill)?
2. *Response (sponsor):* Yes.
3. *Comment:* Regarding Petersen Ranch site, what is source of fill?
4. *Response (sponsor):* Fill will come from the berms around the ponds and berm along Elizabeth Lake Road.
5. *Comment:* Would top of lowered dam be armored?
6. *Response (sponsor):* Yes, it would include riprap and gabion mats that would fill in with sediments over time
7. *Comment:* Loose rock is fine but gabion structures are typically bad for wildlife
8. *Response (sponsor):* **Sponsor will look into other options and specs including geomats/articulated mats.**
9. *Comment:* How would the realignment of the forest road be handled?
10. *Response (sponsor):* In reference to the road/easement graphic, the blue line is the easement (on paper) for USFS and the red line an easement for CA State Parks and Recreation. A previous road was removed. **It is the sponsor's intent to design the road to align with the red line/CA State easement.** Julie stated Bob Blount (sp?) at USFS has not objected to the concept, as long as the USFS has an easement. **Both easement areas (blue and red lines on plans) are excluded from crediting, though if an easement is released in the future it could be open to future credits.**

11. *Comment*: Is sponsor required to establish a new road prior to removing the dam road?
12. *Response (sponsor)*: The existing USFS easement is NOT currently an existing road. While they don't use access road now, they may need it in the future.
13. *Comment*: CDFW may grant mitigation credit for portions of alluvial fan beyond Corps' and USEPA jurisdiction, but requested exhibit to discuss further.
14. *Response*: **Sponsor will prepare a draft exhibit(s) to this effect.**
15. *Comment*: CDFW has determined that the Prospectus is "complete."

iv. IRT Determinations/Approvals: See above.

III. Calleguas Creek Watershed ILF Program: release of final Instrument for renewal of this ILF program

a. Sponsor/USACE:

- i. A red-line and clean copy of this document were distributed to IRT members via email on December 3, 2013. Comment deadline is January 6, 2014.
- ii. Revision from prior (draft) version incorporated comments from Corps Regulatory and Corps office of counsel
- iii. No proposed change in service area
- iv. Camarillo Regional Park (owned by CSUCI) mitigation site is intended to satisfy prior credit purchases as well as at least a portion of the credit needs within the watershed for 5-10 years

b. General issues raised (by Agencies):

i. USACE:

1. *Comment*: **Pursuant to 33 CFR 332.8(D)(8), the Corps will distribute to the IRT a "Notice of Intent to Approve" the final Instrument.**

ii. USEPA:

1. *Comment*: Why was the ILF program only given partial credit for their (2) former mitigation efforts?
2. *Response (Corps and sponsor)*: The sponsor did not seek explicit approval from the Corps for use of ILF funds at these locations, there was no \$\$ for monitoring or short-term maintenance (which led to some failures), no long-term site protection, and co-mingling of ILF funds with other grant sources.
3. *Comment*: What was the cause for substantial delay between acceptance of prior funds and selection of the Camarillo Regional Park mitigation site?

4. *Response (sponsor)*: As opposed to the Santa Clara River, this is a more urbanized watershed. The sponsor was challenged with higher land costs and unwilling private sellers, for the vast majority of the 10+ prospective sites identified in the Instrument's compensatory planning framework (Exhibit A). With respect to the Camarillo Regional Park site, the sponsor has spent several years negotiating with the National Park Service and now the University (as new owner) over proposed uses for the site (e.g., recreational fields, urban park). **The sponsor has now invested substantially in gathering baseline information, preparing designs, and researching entitlements, and expects to present a Development Plan and Interim Mgt Plan to the IRT within the next several months.**
 5. *Comment*: Given these lessons learned, how does the sponsor justify their request for allocation of 7.0 advance credits following Instrument approval?
 6. *Response (sponsor)*: The Camarillo Regional Park mitigation site will be able to accommodate between 20-40 additional acres of riparian, wetland, and buffer credit, so much of the "guesswork" inherent to advance credits will be eliminated (e.g., site identification & characterization, mitigation planning & design, long-term mgt).
 7. *Comment*: Cam Regional Park is a unique opportunity for education & research, given its ownership and proximity to the University campus
 8. *Response*: Comment noted.
- iii. CDFW:
1. *Comment*: CDFW requested a site visit to Cam Regional Park mitigation site.
 2. *Response (sponsor)*: The sponsor will arrange a site visit in the near future, following submission of the draft Development Plan and draft Interim Mgt Plan.
- iv. IRT Determinations/Approvals: **The IRT has no further comments on the final Instrument, and thus recommends signature for renewal of the SCC ILF program following the end of the comment period.**

- IV. State Coastal Conservancy/Southern California Wetlands Recovery Project (SCWRP)
ILF Program: sponsor's responses to public comments upon Prospectus
- a. Sponsor/USACE:
 - i. The sponsor received a total of 10 comments on the Prospectus during the Corps' Public Notice comment period, including 3 agencies, 3 public/private businesses, and 4 members of the general public.
 - ii. Following review of these comments, the sponsor has prepared draft responses for each comment, and will further address within the (future) draft Instrument.
 - b. General issues raised (by Agencies):
 - i. USACE:
 - 1. *Comment:* With respect to service area and site selection, be sure to emphasize commitment in Prospectus (pages 9, 13) to selecting mitigation sites within same 10-digit HUC as the impacts for which they are compensating, and that exceptions would only be allowed following IRT approval. Criteria for justifying "out of watershed" mitigation may be helpful, including proximity, connectivity, similarity of resource types/functions, and rarity of resources.
 - 2. *Response (sponsor):* **Sponsor will address in future draft Instrument.**
 - 3. *Comment:* With respect to service area, the Corps and USEPA recommend including the SCWRP Board of Governor's resolution regarding competition with other ILF and MBs within the same service area. **The Corps is awaiting additional input from South Coast management before submitting comments on the resolution.**
 - 4. *Response (sponsor):* Comment noted.
 - 5. *Comment:* With respect to site selection, there are many "acquisition" sites identified on the SCWRP ("WRP Plan") map exhibit, so is it the sponsors intent to focus on preservation rather than aquatic resource improvements (restoration, etc.)?
 - 6. *Response:* **Sponsor intends to conduct improvements as needed, and will address in future draft Instrument.**
 - 7. *Comment:* With respect to project development and design, note that the ILF program would seek to satisfy a portion of the compensatory mitigation needs for not only the Corps, but also CDFW and the Regional Board(s).
 - 8. *Response (sponsor):* **Sponsor will address in future draft Instrument.**

9. *Comment:* **Based upon time allotted, the Corps, USEPA, and NMFS will provide written comments on the remainder of the sponsor's responses to comments.**

ii. USEPA:

1. *Comment:* USEPA does not object to competition between ILF and MB programs through overlapping service areas.
2. *Response (sponsor):* Comment noted.
3. *Comment:* **Based upon time allotted, the Corps, USEPA, and NMFS will provide written comments on the remainder of the sponsor's responses to comments.**

iii. NMFS:

1. *Comment:* With respect to service area and site selection, NMFS agrees in principle with the "watershed" context for mitigating in the same watershed as impacts, but is seeking more clarity on estuarine and marine areas. **NMFS and Corps will review proposed POLA Umbrella Mitigation Bank draft Instrument and will provide clarifying language if available.**
2. *Response:* With respect to site selection, NMFS emphasizes the importance of preservation based upon rapid urbanization and sea level rise.
3. *Comment:* **Based upon time allotted, the Corps, USEPA, and NMFS will provide written comments on the remainder of the sponsor's responses to comments.**